IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

REVIEW PETITION NO.128 OF 2005
IN
WRIT PETITION NO.5069 OF 2005

Smt.Deepa B. Hinduja Petitioner

versus

Mrs.Devaki M. Mirajkar Respondent

Smt.P.P.Jakhade, adv. for petitioner.
Mr.P.G.Pravin, adv. for respondent.

CORAM : S.C.DHARMADHIKARI, J.
DATE : 18th October 2005

PC :

1. Heard Mrs.Jakhade for the petitioner and Mr.Pravin for respondent.

2. This review petition is filed for recall and review of my order dated 22nd August 2005 in the above writ petition.

3. The only contention raised by Mrs.Jakhade in support of this review petition is that the petitioner should not suffer because of the mistake committed by the counsel appearing on her behalf. According to her, some contentions going to the root of the matter were not raised while

arguing the writ petition. She submits that it was not urged before this Court by the learned counsel then appearing, that as a result of two more Leave and Licence Agreements making in all six Leave and Licence Agreements and uninterrupted, continuous as well as exclusive possession of the petitioner, the version of the respondent land-lady cannot be accepted. In other words, the possession of the petitioner is that of a Lessee and not Licensee as falsely urged in the application before the competent authority. Therefore, the order passed by the revisional authority was ex-facie illegal and should have been quashed and set aside by this Court in exercise of it's writ jurisdiction.

4. Reliance is placed upon a decision of Supreme Court reported in (1999)4-SCC-545 (Delta International Ltd. Vs. Shyam Sundar Ganeriwalla and another).

5. I am afraid that I cannot accept the above contentions. In para no.5 of the order passed by me in the writ petition the contentions as raised by Mrs.Jakhade in support of the review petition, were specifically urged by the learned counsel then appearing before me. My attention was also

invited to the statutory provisions namely Sections 24 and 55 of the Maharashtra Rent Control Act.

6. In paras 9 to 12 of my order I had dealt with self-same contentions. I referred to the clauses in the agreements which unmistakably go to show that the possession of the petitioner was that of a Licensee. I had observed that in the light of the materials produced before the authority, the conclusive evidence rule prescribed in Explanation (b) to Section 24 is not diluted. The status of the petitioner does not undergo any change assuming all agreements and documents are taken into consideration.

7. In the light of the aforesaid, there is no substance in the review petition.

8. The decision relied upon by Mrs.Jakhade has no application to the present facts and circumstances. Therein, the Supreme Court was concerned with a suit from which the appeal arose. The Supreme Court has referred to the well settled tests while determining the nature of transaction, namely, lease or licence and on consideration of the entire material held that in

the case before it the deed is of leave and licence and not a lease. This decision cannot apply to the present case wherein application was filed under section 24 of the Act with specific pleas and the presumption arising from the abovementioned statutory provisions, has not been rebutted by the petitioner.

9. The review petition is thus dismissed.

10. At this stage Mrs.Jakhade requests that stay of the execution of the order passed by the Additional Commissioner granted earlier, should continue. Mr.Pravin opposes this request. The order passed in the writ petition was delivered on 22nd August 2005. The review petition is filed at the fag end of the period of eight weeks granted vide the said order. The petitioner was very well aware of her remedies in law. Yet, has chosen to file a frivolous review petition. Such a litigant does not deserve any discretionary or equitable relief.

11. However, considering the fact that the petitioner is to be dispossessed from residential premises, the order of Additional Commissioner should not be given effect to for a period of ten

days from today.

(S.C.DHARMADHIKARI, J.)